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For Merit and Honesty in Government

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THE ROLE OF THE SPECIAL COUNSEL

Office of the Special Counsel
Merit Systems Protection Board
Washington, D.C. 20419

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FOR MERIT AND HONESTY IN GOVERNMENT

The Role of the Special Counsel

When a prohibited personnel practice exists in a Federal agency, who can investigate and prosecute?

When a prohibited personnel action has been or is to be taken, who can stop it?

When a Federal employee blows the whistle on illegalities, mismanagement, waste, abuse of authority or danger to public health or safety, who can offer certain protections?

When Federal employees are subjected to political coercion or have questions about the law limiting their political activities, who can they turn to?

Since the Civil Service Reform Act took effect in 1979, the independent Office of the Special Counsel has been available to assist Federal employees in all of these matters. The Special Counsel is an attorney appointed by the President and confirmed by the Senate, who can be removed from a one-time, 5 year term only for inefficiency, neglect of duty or malfeasance. The Office of the Special Counsel (OSC) is an independent office within the U.S. Merit Systems Protection Board with its own management and regulatory authority, and its budget requests submitted directly to Congress.

READEX FICHE best copy available

Prohibited Personnel Practices

Under the Civil Service Reform Act, Federal agency heads, managers, supervisors and personnel officials are responsible for preventing prohibited personnel practices, complying with and enforcing civil service laws, rules and regulations. **There must be a personnel action involved (such as an appointment, promotion, reassignment, adverse action, etc.), before there can be a prohibited personnel practice.** Federal employees may file complaints of prohibited personnel practices with OSC. The complaints will be investigated and, if necessary, prosecuted. OSC will generally not investigate a matter which should be raised under a grievance or appeals procedure unless a prohibited personnel practice is involved.

Under the law, any employee who can take, have others take, recommend or approve any personnel action may not:

- Discriminate based on race, color, religion, sex, national origin, age, handicapping condition, marital status or political affiliation
- Solicit or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics
- Coerce the political activity of any person
- Deceive or willfully obstruct any person from competing for employment
- Influence any person to withdraw from competition for any position to improve or injure the employment prospects of any other person
- Give unauthorized preference or advantage to any person to improve or injure the employment prospects of any particular employee or applicant
- Engage in nepotism (hire or promote relatives or advocate such activity)
- Take reprisal against a whistleblower
- Take reprisal for the exercise of an appeal right

- Discriminate based on personal conduct which is not adverse to on-the-job performance of the employee, applicant or others
- Violate any law, rule or regulation implementing or directly concerning merit system principles (such as fair and open job competition)

Stays

You may request the Special Counsel to stop or postpone a **personnel action** you believe would constitute a prohibited personnel practice. The Special Counsel may ask any member of the Merit Systems Protection Board to order an initial stay of the action for 15 calendar days. The Special Counsel may seek a 30-day extension and, if circumstances require, an added extension for such time as the Board considers appropriate.

During an investigation initiated by OSC, no disciplinary action may be taken against any employee for any alleged prohibited activity under investigation, or any related activity, without the approval of the Special Counsel.

Whistleblowers

You are a "whistleblower" if you provide information to the Special Counsel, an Inspector General, agency officials or outsiders, which you reasonably believe evidences:

- a violation of any law, rule or regulation; or
- mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

However, this does not apply to:

(1) Disclosures prohibited by statute; or

(2) Information which, by Executive order, must be kept secret for national defense purposes or the conduct of foreign

affairs. (The Special Counsel will forward secret information received to appropriate congressional committees.) Disclosure of information to the Special Counsel or agency Inspector General is protected even if otherwise prohibited by law.

As a whistleblower, your identity will not be revealed without your consent except in rare instances (See "How and Where to File.")

Agency Reports

After the Special Counsel reviews a **whistleblower** complaint, the information disclosed will be sent to the head of the agency involved, with a copy to the agency's Inspector General. When the Special Counsel concludes that a violation is likely to exist, the agency head will be required to conduct an investigation. A written report on the results of the investigation must then be submitted to Congress, the President and the Special Counsel. The Special Counsel will give a copy of the report to the whistleblower, and keep a copy in a public file.

When the Special Counsel does not require an agency investigation, the agency must make any necessary inquiries and submit a written report to the Special Counsel stating what action was or will be taken. OSC will inform the whistleblower of the report.

Hatch Act

The Hatch Act prohibits Federal employees from participating in certain political activities. Specifically, you may not use your official authority or influence to interfere with or affect the result of an election, and may not take an active part in partisan political management or campaigns. This does not restrict your right to vote in any election, publicly and privately express your opinions, participate in non-

partisan activities, petition Congress, and some other activities. Some State and local government employees are also subject to less severe political activity restrictions.

If you believe this law is being violated, you may file a complaint with the Special Counsel who will investigate and, if necessary, prosecute. OSC will also give advisory opinions as to whether or not the political activity you may wish to undertake violates the law.

Other Investigations

Besides prohibited personnel practice and Hatch Act complaints, the Special Counsel may investigate:

- Arbitrary or capricious withholding of information in violation of the Freedom of Information Act (FOIA). (The Special Counsel cannot require disclosure, but can seek to discipline the offender.)
- Activities prohibited by any civil service law, rule or regulation, including partisan political intrusion in personnel decisions, unless they are more appropriately resolvable under an appeals procedure. (However, OSC does not defer to administrative appeal procedures when a prohibited personnel practice is involved.)
- An employee's involvement in prohibited discrimination in any personnel action found by any court or other authority, unless more appropriately resolvable under an appeals procedure.
- Prohibited personnel practices when no complaint was filed or a complaint was withdrawn.
- To determine if disciplinary action is warranted:
  (1) when a court questions an employee's actions in withholding information requested under FOIA; or
  (2) when a court finds a violation of the Right to Financial Privacy Act of 1978.

After the Investigation

After investigation, the Special Counsel will recommend corrective action to an agency if there is reason to believe a prohibited personnel practice has occurred, exists or is to be taken. (Evidence of a criminal violation which arises during an investigation, including agency investigation of a whistleblower complaint, will be referred to the Department of Justice.)

If the agency does not take the recommended action after a reasonable period, the Special Counsel may request the Merit Systems Protection Board (MSPB) to order corrective action. The Special Counsel may also request MSPB to order disciplinary action against an employee engaged in wrongdoing. The employee's rights in such case are set forth in the Board's regulations. A complaint may also be filed against an employee for knowing and willful refusal or failure to comply with an MSPB order.

The Special Counsel may also request an order withholding Federal funds from a State or local agency if:

- The agency has failed to remove an employee, as ordered by MSPB, for prohibited political activity; or
- Such employee is reemployed within 18 months in a State or local agency of the same State.

In connection with any investigation or hearing, all Federal employees are required to testify and provide records under Civil Service Rule 5.4. Nonetheless, the Special Counsel also has authority to issue subpenas for documents or the attendance and testimony of witnesses. OSC may require employees to give depositions under oath or to respond formally to written questions.

The Special Counsel may intervene in any case before MSPB (such as an adverse action appeal), and may file complaints before the Board requesting review of the validity of any rule or regulation issued by the Office of Personnel Management.

Who is Covered

Anyone may disclose whistleblowing information to the Special Counsel for referral to the head of an agency. However, the Special Counsel may order an investigation only if the information is received from current or former Federal employees, job applicants or someone representing them.

Also, the Special Counsel may act on complaints of prohibited personnel practices or other prohibited activities (see "Other Investigations"). Prohibited personnel practices apply to Federal job applicants or current or former Federal employees (other than political "Schedule C" appointees) in any agency of the executive branch, the administrative office of the U.S. courts or the Government Printing Office, but **not** to employees in:

- A Government corporation;
- The Central Intelligence Agency, Defense Intelligence Agency, National Security Agency or certain other intelligence agencies excluded by the President;
- The General Accounting Office;
- The U.S. Postal Service or Postal Rate Commission; or
- The Federal Bureau of Investigation. (Department of Justice regulations established by law provide that the Counsel on Professional Responsibility may request the Attorney General to stay any personnel action when there is evidence of reprisal against an FBI employee for whistleblowing.)

The Special Counsel also investigates and advises on alleged violations of the Hatch Act governing political activity in any agency in the executive branch, the U.S. Postal Service, Postal Rate Commission and District of Columbia Government.

How and Where to File

If you have a job-related complaint of any kind, you should first find out how to raise

the issue with your agency (e.g., through your supervisor, a grievance or appeal procedure, Inspector General, etc.). In many instances an avenue may exist to resolve the complaint quickly and effectively.

However, **under the law you may submit covered allegations or information to the Special Counsel at any time.** Although OSC cannot give advisory opinions about whether or not to file, it can provide you with information about any of the above to assist you in making your decision.

Further, if you do not have someone to represent you, OSC will explain the nature of the evidence needed to prove your charges, and will work with you as necessary during its initial review and evaluation. The Office will always be available to assist you at any stage in the processing of your complaint.

Allegations of prohibited activities and information evidencing wrongdoing (whistleblowing) may be submitted to OSC in any written form, but should include as a minimum:

- Your full name, address and phone number at which you may be reached for more information or notification of complaint status. (Your identity will not be revealed by OSC without your consent, except in rare instances when immediate action is required to carry out the Special Counsel's duties. OSC will always try to contact you first.)
- The name and address or location of the Federal agency involved, including specific office or activity.
- Your job title, pay grade and employer, giving organizational or activity name and address.
- Whether the information submitted evidences:
  —A prohibited personnel practice or other activity prohibited by civil service law, rule or regulation; or
  —A violation of other law, rule or regulation; or mismanagement, a

gross waste of funds, abuse of authority or substantial and specific danger to public health or safety.

- A brief, accurate statement of facts you believe evidences prohibited activity or wrongdoing and a clear, concise description of actions or events being reported:
  - —For prohibited personnel practices, the specific personnel action taken or proposed; otherwise, the agency's specific actions which evidence wrongdoing;
  - —Who proposed or took the action, or otherwise are or were directly involved;
  - —When action was taken or proposed or events occurred;
  - —Where; and
  - —Why you believe the agency action was illegal or improper.
- Any pertinent documentary evidence or information you may have;
- Whether or not you consent to disclosure of your identity to the agency if necessary to take action.

If needed information is not furnished, the Special Counsel may request it before proceeding. Likewise, OSC may act on information given anonymously **only** if all needed information is given.

All complaints, allegations, inquiries or information should be submitted to the central office or appropriate field office as follows:

Central Office

Office of the Special Counsel
1717 H St., N.W.
Washington, D.C. 20419
Phone: (202) 653–7188

District of Columbia, Maryland, Virginia, West Virginia

Field Offices

Atlanta Field Office
Pershing Point Plaza, Room 317
1365 Peachtree St., N.E.
Atlanta, Georgia 30309
Phone: FTS 257-3750
(404) 881-3750

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Chicago Field Office
175 W. Jackson Blvd., 17th Floor
Chicago, Illinois 60604
Phone: (312) 886-2381

Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, Wisconsin

Dallas Field Office
Room 2B29
1100 Commerce St.
Dallas, Texas 75242
Phone: (214) 767-8871
or FTS 729-8871

Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, Wyoming

Philadelphia Field Office
2nd and Chestnut Sts., Room 806
Philadelphia, Pennsylvania 19106
Phone: (215) 597-3286

Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands

San Francisco Field Office
Room 11454
Post Office 36007
450 Golden Gate Ave.
San Francisco, California 94102
Phone: (415) 556-9450

Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Washington

Branch offices have been established in Boston, Denver, Los Angeles, and Seattle.

This pamphlet is provided as general information to the public and is not to be considered regulatory or legal authority.

Merit Systems Principles

FAIR and open job competition assuring equal opportunity

FAIR and equal treatment in all personnel matters without illegal discrimination and with proper regard for employee privacy and Constitutional rights

EQUAL pay for work of equal value considering private sector pay, and incentives for excellence in performance

HIGH employee standards of integrity, conduct and concern for the public interest

EFFICIENT and effective use of the Federal work force

RETENTION and removal based on employee performance

EDUCATION and training to improve employee and organizational performance

EMPLOYEE protection against arbitrary action, personal favoritism and political coercion, prohibiting use of official authority for political coercion, and

EMPLOYEE protection against reprisal for lawful whistleblowing

—Title 5, U.S. Code, Section 2301

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(The following Code of Ethics applies to all Government employees and office holders. The Code was agreed to by the House of Representatives and the Senate as House Concurrent Resolution 175 in the Second Session of the 85th Congress and was amended by Public Law 96-303.)

CODE OF ETHICS FOR GOVERNMENT SERVICE

Any Person In Government Service Should:

Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

Uphold the Constitution, laws, and legal regulations of the United States and all governments therein and never be a party to their evasion.

Give a full day's labor for a full day's pay; giving earnest effort and best thought to the performance of duties.

Seek to find and employ more efficient and economical ways of getting tasks accomplished.

Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or herself or for family members, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties.

Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

Never use any information gained confidentially in the performance of governmental duties as a means for making private profit.

Expose corruption wherever discovered.

Uphold these principles, ever conscious that public office is a public trust.